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Reporting Category

Category	Subcategory	Situation	Victim/Offender Armed?	Weapon Types	Weapon Other	Weapon Recovered?	Deceased?
05A EXCESSIVE FORCE / ON DUTY - INJURY	KICKED	DURING ARREST	-	-	-	-	-
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Log No: 1015584 Type:CR

Accused Members

Review	Name	Status	Accused Overall Finding	Recommended Penalty	No. of Days	Date/Time Served	Created Date	Complimentary History
View	MERKEL, JOSEPH	CLOSED/FINAL	NOT SUSTAINED	-	-	-	08-APR-2008	N/A
View	VAN DYKE, JASON	CLOSED/FINAL	EXONERATED	-	-	-	17-FEB-2009	N/A
row(s) 1 - 2 of 2								

Attachments

No.	Type	Related Person	No. of Pages	Narrative	Original in File	Entered By	Entered Date/Time	Status	Approve Content?	Approve Inclusion?
View	1	FACE SHEET	N/A	-	-	TOPPINS, YOLANDA	APR-08-2008 10:48	-	-	-
View	2	CONFLICT CERTIFICATION	N/A	-	-	QUERFURTH, PATRICK	APR-10-2008 10:23	-	-	-
View	3	CONFLICT CERTIFICATION	N/A	-	-	DELANEY, RICHARD	APR-11-2008 16:25	-	-	-
View	4	COMPLAINANT STATEMENT	N/A	4	Statement and Affidavit of T. [REDACTED]	DELANEY, RICHARD	FEB-05-2009 11:56	APPROVED	-	YES
View	5	REPORT (OTHER)	N/A	1	T/F: Observation of Injury	DELANEY, RICHARD	FEB-05-2009 11:59	APPROVED	-	YES
View	6	REPORT (OTHER)	N/A	1	Emergency Dept. Discharge Info - [REDACTED]	DELANEY, RICHARD	FEB-05-2009 12:03	APPROVED	-	YES
View	7	ARREST REPORT	N/A	5	A/R of [REDACTED]	DELANEY, RICHARD	FEB-05-2009 12:12	APPROVED	-	YES
View	8	PHOTOGRAPH	N/A	2	Central Booking Photographs	DELANEY, RICHARD	FEB-10-2009 09:01	APPROVED	-	YES
View	9	TACTICAL RESPONSE REPORT (TRR)	N/A	2	TRR of PO Merkel	DELANEY, RICHARD	FEB-10-2009 09:06	APPROVED	-	YES
View	10	REPORT (OTHER)	N/A	1	Returned Cert. Mail (Green Card) from Hospital	DELANEY, RICHARD	FEB-10-2009 09:11	APPROVED	-	YES
View	11	REPORT (OTHER)	N/A	1	Request for E.T. Photos	DELANEY, RICHARD	FEB-10-2009 09:15	APPROVED	-	YES
View	12	INTERVIEW - WITNESS	N/A	2	Statement of	DELANEY,	FEB-10-	APPROVED	-	YES

				C. [REDACTED]		RICHARD	2009 09:22		
View	13	REPORT (OTHER)	N/A	1	T/F - Information	YES	DELANEY, RICHARD	FEB-10- 2009 09:27	APPROVED - YES
View	14	INTERVIEW - WITNESS	N/A	2	Statement of [REDACTED]	YES	DELANEY, RICHARD	FEB-10- 2009 09:33	APPROVED - YES
View	15	VICE CASE REPORTS	N/A	2	RD# HP265613	YES	DELANEY, RICHARD	FEB-10- 2009 09:37	APPROVED - YES
View	16	REPORT (OTHER)	N/A	2	Letter to Parent of [REDACTED]	YES	DELANEY, RICHARD	FEB-10- 2009 09:53	APPROVED - YES
View	17	REPORT (OTHER)	N/A	1	T/F Info	YES	DELANEY, RICHARD	FEB-10- 2009 10:02	APPROVED - YES
View	18	REPORT (OTHER)	N/A	2	1/2 sheets for accused	YES	DELANEY, RICHARD	FEB-10- 2009 10:17	APPROVED - YES
View	19	PHOTOGRAPH	N/A	6	E.T. Photographs	YES	DELANEY, RICHARD	FEB-10- 2009 14:02	APPROVED - YES
View	20	O.E.M.C. (OEMC) TRANSMISSIONS	N/A	5	Event Query	YES	DELANEY, RICHARD	FEB-11- 2009 10:02	APPROVED - YES
View	21	REPORT (OTHER)	N/A	4	Request for Medical Records	YES	DELANEY, RICHARD	FEB-11- 2009 10:08	APPROVED - YES
View	22	MEDICAL RECORDS	N/A	4	-	YES	DELANEY, RICHARD	FEB-11- 2009 10:14	APPROVED - YES
View	23	REPORT (OTHER)	N/A	2	PV to V. [REDACTED] and K. [REDACTED]	YES	DELANEY, RICHARD	FEB-11- 2009 10:36	APPROVED - YES
View	24	WITNESS REPORT	N/A	2	Statement of [REDACTED]	YES	DELANEY, RICHARD	FEB-11- 2009 10:48	APPROVED - YES
View	25	REPORT (OTHER)	N/A	1	T/F - Missed Appt.	YES	DELANEY, RICHARD	FEB-11- 2009 10:54	APPROVED - YES
View	26	REPORT (OTHER)	N/A	1	T/F Att. to Interview Witness	YES	DELANEY, RICHARD	FEB-13- 2009 14:03	APPROVED - YES
View	27	REQUEST FOR INTERVIEW/STATEMENT/REPORT	N/A	1	For PO Van Dyke	YES	DELANEY, RICHARD	FEB-13- 2009 14:29	APPROVED - YES
View	28	REPORT (OTHER)	N/A	1	For PO Merkel	YES	DELANEY, RICHARD	FEB-13- 2009 14:32	APPROVED - YES
View	29	REQUEST FOR INTERVIEW/STATEMENT/REPORT	N/A	1	For PO Van Dyke - Rescheduled	YES	DELANEY, RICHARD	FEB-13- 2009 15:26	APPROVED - YES
View	30	NOTIF OF CHARGES/ALLEGATIONS - ADM PROC RIGHTS (STATUTORY)	N/A	2	NOA/Request to Secure Counsel for PO Merkel	YES	DELANEY, RICHARD	FEB-13- 2009 15:29	APPROVED - YES
View	31	STATEMENT OF POLICE OFFICER	N/A	4	Statement of PO Van Dyke	YES	DELANEY, RICHARD	FEB-13- 2009 16:34	APPROVED - YES
View	32	NOTIF OF CHARGES/ALLEGATIONS - ADM PROC RIGHTS (STATUTORY)	N/A	2	For PO Merkel	YES	DELANEY, RICHARD	FEB-13- 2009 16:53	APPROVED - YES
View	33	STATEMENT OF POLICE OFFICER	N/A	11	Statement of PO Merkel	YES	DELANEY, RICHARD	FEB-13- 2009 17:18	APPROVED - YES
View	34	REPORT (OTHER)	N/A	2	Statement of witness - Dr. [REDACTED]	YES	DELANEY, RICHARD	APR-29- 2009 11:17	APPROVED - YES
View	35	MEDICAL RECORDS	N/A	6	Complete Medical records for T. [REDACTED]	YES	DELANEY, RICHARD	APR-29- 2009 11:31	APPROVED - YES

View	36	REPORT (OTHER)	N/A	1	T/F Information Regarding Interview of Witness	YES	DELANEY, RICHARD	APR-30-2009 08:38	APPROVED -	YES
View	37	INVESTIGATOR CASE LOG	N/A	5	-	YES	DELANEY, RICHARD	APR-29-2009 11:40	APPROVED -	YES
View	-	REPORT (OTHER)	N/A	1	Revised finding for Officer Van Dyke	YES	DUFFY, MICHAEL	SEP-18-2009 12:20	APPROVED -	YES
View	-	SUMMARY REPORT DIGEST	N/A	8	-	NO	QUERFURTH, PATRICK	MAY-29-2009 14:15	APPROVED -	YES

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Internal Use Only

No Internal Use Only attachments available.

Print Accused Appeal Forms

No Accused Appeal forms available for this Log No.

Related Incidents

[TIP](#) Related Incidents listed below are for reference only. These may be viewed using the related application search screens.

Log No./Tracking No.	Type	Comments
30667	RELATED - TACTICAL RESPONSE REPORT	RD No.HP265613 - Event No.0809722689 - CB No.17211108

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Status History

[TIP](#) Every employee included in the Status History is subject to be called for legal or administrative proceedings.

Resulting Status	Status Date/Time	Created By	Position	Employee No.	Assigned/ Detailed Unit	Comments
CLOSED/FINAL	24-SEP-2009 12:14	LOCKHART, BRIAN	CLERK 3		113 / -	-
PENDING IMPLEMENT ACTION	18-SEP-2009 15:13	DUFFY, MICHAEL	COOR /INVESTIGATION		113 / -	-
PENDING C.O.P.A. COORDINATOR INCIDENT REVIEW	17-SEP-2009 09:09	HENDERSON, PAMELA	CLERK 3		113 / -	-
PENDING REVIEW AFTER COMMAND CHANNEL (C.O.P.A.)	17-SEP-2009 09:07	HENDERSON, PAMELA	CLERK 3		113 / -	-
PENDING IMPLEMENT ACTION	15-SEP-2009 15:49	MAHONEY, DANIEL	PO LEGAL OFF 2		121 / -	-
PENDING SUPERINTENDENT DECISION	28-AUG-2009 23:32	DUGAN JR, DANIEL	DEPUTY SUPT.		142 / -	-
PENDING COMMAND CHANNEL REVIEW	07-AUG-2009 22:28	GEORGAS, STEVE	ASST DEPUTY SUP		018 / 141	-
PENDING COMMAND CHANNEL REVIEW	06-AUG-2009 08:47	ROWAN, JAMES	SERGEANT OF POLICE		121 / -	-
PENDING ADVOCATE REVIEW	06-AUG-2009 08:46	ROWAN, JAMES	SERGEANT OF POLICE		121 / -	-
PENDING COMMAND CHANNEL REVIEW	29-JUL-2009 10:02	ROWAN, JAMES	SERGEANT OF POLICE		121 / -	-
PENDING ADVOCATE REVIEW	29-JUL-2009 09:56	ROWAN, JAMES	SERGEANT OF POLICE		121 / -	need to update ccr
PENDING COMMAND CHANNEL REVIEW	23-JUN-2009 14:44	MC COTTER, MICHAEL	CHIEF		142 / -	-
PENDING COMMAND CHANNEL REVIEW	21-JUN-2009 10:42	RYAN, KEVIN	COMMANDER		253 / -	-
PENDING COMMAND CHANNEL REVIEW	19-JUN-2009 13:37	ROTTNER, BRUCE	DEP CHIEF		142 / 213	-
PENDING COMMAND CHANNEL REVIEW	18-JUN-2009 12:44	MAHONEY, DANIEL	PO LEGAL OFF 2		121 / -	-
PENDING ADVOCATE REVIEW	11-JUN-2009 12:49	HOFFMANN, KATHLEEN	POLICE OFFICER		121 / -	-
PENDING REVIEW INCIDENT (I.A.D./DISTRICT USE)	02-JUN-2009 10:09	HENDERSON, PAMELA	CLERK 3		113 / -	-

CLOSED AT C.O.P.A.	02-JUN-2009 10:06	HENDERSON, CLERK 3 PAMELA		113 / -	-
PENDING REVIEW INCIDENT (C.O.P.A. USE ONLY)	29-MAY-2009 14:15	QUERFURTH, SUPERVISING PATRICK INV COPA		113 / -	-
PENDING INVESTIGATIVE REVIEW	29-MAY-2009 14:05	DELANEY, INVESTIGATOR 2 RICHARD COPA		113 / -	-
PENDING INVESTIGATION	10-APR-2008 10:23	QUERFURTH, SUPERVISING PATRICK INV COPA		113 / -	-
PENDING ASSIGN INVESTIGATOR	09-APR-2008 16:16	DUFFY, COOR MICHAEL /INVESTIGATIONS		113 / -	Type Changed from INFO to CR on 09-APR-2008 16:16 by DUFFY, MICHAEL Affidavit information for this complaint has changed on 09-APR-2008 16:16 by DUFFY, MICHAEL
PENDING ASSIGN TEAM	08-APR-2008 13:40	QUERFURTH, SUPERVISING PATRICK INV COPA		113 / -	-
PENDING SUPERVISOR REVIEW	08-APR-2008 11:52	TOPPINS, INTAKE AIDE YOLANDA		113 / -	-
PRELIMINARY	08-APR-2008 10:48	TOPPINS, INTAKE AIDE YOLANDA		113 / -	-

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Command Channel Reviews

Accused Name	Sequence No.	Reviewer
MERKEL, JOSEPH	1	ROTTNER, BRUCE
MERKEL, JOSEPH	2	MC COTTER, MICHAEL
VAN DYKE, JASON	1	GEORGAS, STEVE
VAN DYKE, JASON	2	DUGAN JR, DANIEL

row(s) 1 - 4 of 4

SUMMARY REPORT DIGEST

CHICAGO POLICE DEPARTMENT

LOG NO
1015584TYPE
CRDATE OF REPORT
30-APR-2009

INSTRUCTIONS: To be used in all cases that are to be classified as either EXONERATED, UNFOUNDED, NOT SUSTAINED, NO AFFIDAVIT, or in SUSTAINED cases where the Disciplinary Recommendation does not exceed Five (5) DAYS SUSPENSION.

TO: CHIEF ADMINISTRATOR, INDEPENDENT POLICE REVIEW AUTHORITY

FROM - INVESTIGATOR'S NAME	RANK	STAR NO	EMPLOYEE NO	UNIT ASSIGNED	UNIT DETAILED
DELANEY, RICHARD	9182			113	

REFERENCE NOS.(LIST ALL RELATED C.L., C.B., I.R., INVENTORY NOS., ETC., PERTINENT OF THIS INVESTIGATION)

INCIDENT ADDRESS: 7100 S. ASHLAND AVE, CHICAGO, IL 60636	DATE / TIME: 06-APR-2008 21:04	BEAT: 735
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ACCUSED

NAME	RANK	STAR NO	EMP NO	UNIT ASSIGNED	UNIT DETAILED	SEX/RACE	DOB	APPOINTED DATE	ON DUTY ?	SWORN ?
MERKEL, JOSEPH J	9161	19301		023	213	M / WHI	1971	31-AUG-1998	UNK	YES
VAN DYKE, JASON D	9161	9465		253		M / WHI	1978	25-JUN-2001	UNK	YES

REPORTING PARTY

NAME	ADDRESS*	CITY STATE	TELEPHONE	SEX / RACE	DOB / AGE
		CHICAGO, IL		M / BLK	1988 / 20

VICTIMS

NAME	ADDRESS*	CITY STATE	TELEPHONE	SEX / RACE	DOB / AGE
		CHICAGO, IL		M / BLK	1988 / 20

WITNESSES

NAME	ADDRESS*	CITY STATE	TELEPHONE	SEX / RACE	DOB / AGE
		CHICAGO, IL		M / BLK	1988 / 20
		CHICAGO, IL		F / BLK	1991 / 17
		CHICAGO, IL		F / BLK	1992 / 17
		CHICAGO, IL		M / BLK	/

* IF CPD MEMBER, LIST RANK, STAR, EMPLOYEE NOS. IN ADDRESS, PAX/BELL IN TELEPHONE BOX.

ALLEGATIONS

SEE ATTACHED REPORT

SUMMARY

SEE ATTACHED REPORT

ATTACHMENTS

INVESTIGATIVE REPORTS - SUPPORTING ALLEGATIONS LIST ATTACHMENTS NUMBER	INVESTIGATIVE REPORTS - SUPPORTING ACCUSED MEMBERS(S) LIST ATTACHMENTS NUMBER:	PHYSICAL EVIDENCE LIST ATTACHMENTS NUMBERS:	TOTAL NUMBER OF ATTACHMENTS SUBMITTED WITH THIS FILE:
4	32, 33	19	34

FINDINGS - RECOMMENDATIONS

ACCUSED OFFICER: Joseph Merkel, #19301, Unit 213

Allegation #1: Not Sustained

ACCUSED OFFICER: Jason Van Dyke, #9456, Unit 253

Allegation #1: Non Sustained


Supervisor, IPRA

DATE INITIATED
(Date incident was received for investigation)

10-APR-2008

DATE COMPLETED (Date of this report)

30-APR-2009

ELAPSED TIME
(Total time expressed in days)

385

Investigator will initiate the Command Channel Review form by
completing the Investigator's Section.

INVESTIGATOR'S SIGNATURE


INDEPENDENT POLICE REVIEW AUTHORITY
Summary Report

Log #1015584
Page 3

ALLEGATIONS:

On 08 APR 08, at 1048 hours, the complainant, [REDACTED] filed this complaint, with I.P.R.A. Intake Aide Yolanda Toppins. [REDACTED] subsequently alleged that on 06 APR 08, at 2100 hours, at 7100 S. Ashland, **Officer Joseph Merkel, #19301, Unit 213:**

- 1) Physically maltreated him during the course of his arrest in that he kicked him on the face.

[REDACTED] further alleged that during the course of the same incident, **Officer Jason Van Dyke, #9465, Unit 253:**

- 1) Unnecessarily displayed and pointed his gun at him during the course of his arrest.

In his statement, the complainant, [REDACTED] stated that on the date of this incident, he was leaving the "Food for Less" store, located on the northwest corner of 71st and Ashland, heading towards the "Rainbow" Food and Liquor store directly across the street. He was with several friends who he identified as [REDACTED] and [REDACTED] and [REDACTED]. As they approached the parking lot of the Rainbow store, they observed a vehicle being driven in an erratic fashion in the parking lot. After he and his friends heard the aforementioned vehicle strike the side of the building, the Rainbow Food and Liquor store, they ran into an alley heading south towards 72nd Street.

As [REDACTED] was running, he noticed he dropped his cellular telephone, then stopped, and returned to the location where it had landed. As he reached to pick it up off of the ground, he heard an individual instructing him to drop his hands and not to move. [REDACTED] looked over his left shoulder and observed an officer, whom he identified as Officer Van Dyke, pointing a firearm at him. He then began to lie face down on the ground but before he was able to do so, he was kicked on the left eye. Upon inquiry, [REDACTED] stated that his head was approximately two feet off of the ground when he was kicked.

One of the accused officers brought [REDACTED] arms behind his back; one of then accused then stated, "He's resisting arrest! He Resisting Arrest!" He was kicked in the face a second time and lost consciousness. When [REDACTED] awoke, he was handcuffed and in the back seat of a squad car. The officers later transported him to the 007th District Police Station for processing. [REDACTED] was taken to and treated at Holy Cross Hospital, from where he eventually released. Upon inquiry, [REDACTED] identified Officer Joseph Merkel as the individual who kicked him on the eye (Att #4)

In his statement, the Witness, [REDACTED] stated that on the date of this incident, he was with several friends leaving the "Food 4 Less" located at 70th and Marshfield. As he was crossing the street, he heard several loud sounds and believing it to be gunfire, he and the others with him, except [REDACTED] ran towards 72nd street. [REDACTED] made his way to [REDACTED] house and remained there for approximately five minutes. After he caught his breath, [REDACTED] returned to the location of where he had previously heard the loud sounds. At that time, he observed [REDACTED] sitting in the back seat of a squad car. [REDACTED] indicated that as he observed [REDACTED] sitting in the back of the squad car, he noticed swelling to one of [REDACTED] eyes.

The following day, [REDACTED] told [REDACTED] that while he was bending over to pick up his cellular telephone, an officer kicked him on the face. Upon inquiry, [REDACTED] stated he was not with [REDACTED] when he was allegedly kicked on the face (Att #12).

In their respective statements, the witnesses, [REDACTED] and [REDACTED] all provided essentially the same account of the incident as [REDACTED]. None of the aforementioned individuals observed the accused kick [REDACTED] on his face. It should be noted that April

██████████ identified her brother, ██████████ as a witness to this incident (Atts #14, 17, 24).

Attempts to contact and/or interviews the witnesses, ██████████

██████████ were unsuccessful (Att #23, 25, 26, 34).

The R/I conducted a **personal visit** to the location of this incident to locate any surveillance cameras that might have captured the incident and conduct a canvass. No surveillance cameras were observed and no additional witnesses were located (Att #13).

Medical Records from Holy Cross Hospital reflect that he was treated on 07 APR 08, at 0730 hours. His Chief Complaint was that he was twice kicked in the left eye at approximately 2000 hours the previous evening. Swelling and bruising to the left orbital area was noted (Att #22 & 35). The R/I subsequently interviewed Dr. ██████████ who was identified via the medical records as the physician who treated ██████████ Dr. ██████████ indicated that he did not specifically recall treating ██████████ but indicated that he did so as his signature is on the medical records. Upon viewing the evidence technician photographs, Dr. ██████████ observed a contusion and an abrasion to the left orbital area. Although he did not know the exact cause of injury he did state that it was consistent with blunt impact. Dr. ██████████ noted that the eyes are recessed in the head and that if ██████████ fell and hit his head on the ground, there possibly would be injury to the areas that first struck the ground such as on his forehead, cheek, and/or nose. He indicated, however, that ██████████ did not have any injury to the aforementioned area. He added that the injury was isolated to the left eye and what caused it struck only the eye and not the surrounding area (Att #34).

The **Arrest Report** for ██████████ reflects that the accused observed a vehicle collision in the Rainbow Foods parking lot. The owner, ██████████ came out of the store, flagged down the officers and began screaming for help. The officers approached the scene believing it to be a robbery in progress, and subsequently observed numerous individuals flee. The accused gave chase to one of the individuals, now identified as ██████████ who ran into the alley south of 71st street. Officer Merkel approached ██████████ who was bending over, had his back turned to him, and hands near his waistband. Officer Merkel gave ██████████ numerous commands to show his hands but he refused to do so. He then approached ██████████ and attempted to place him in custody, but ██████████ resisted by swinging his arms. Officer Merkel tackled him and preformed an emergency handcuffing technique.

The same report also reflects that during this incident, ██████████ was “grabbing under his body towards his waist.” He refused to comply to show his hands and an open hand strike to his upper back was utilized. This action caused ██████████ face to hit the ground which resulted in minor swelling to the left side. Officer Van Dyke assisted Officer Merkel in gaining control of ██████████ and placing him in handcuffs. A custodial search recovered a small amount of Suspect cannabis. ██████████ was charged with Resisting Arrest and Possession of Cannabis. He was released, however, without charging. The **Visual Check of Arrestee** notes that ██████████ stated that he had pain to left eye and had swelling to the same area; he was transported to

Holy Cross Hospital for treatment (Att #7).

Central Booking and Evidence Technician photographs depicted [REDACTED] with swelling to the left eye. The E.T. photographs all depict what appears to be a small laceration under the left eye (Atts #8 & 19-19E).

The **Case Report** provides essentially the same account of the incident as the Arrest Report (Att #15).

A **Tactical Response Report**, completed by Officer Joseph Merkel, reflects that [REDACTED] fled and pulled away, and in response, Officer Merkel utilized an emergency takedown and Open Hand strike. [REDACTED] stated to the Watch Commander that he did not run from the police nor was he in possession of Cannabis (Att #9).

In his statement, the accused, **Officer Jason Van Dyke, #9465**, stated that on the date of this incident, he and his partner, Officer Joseph Merkel, observed a vehicle collision in a parking lot location on the southwest corner of 71st and Ashland. The two officers responded to the collision and as they were doing so, they observed two individuals exit from one of the vehicles involved in the collision and flee on foot. At the same time, unidentified individuals who had been standing in front of the store parking lot in which the vehicle collision had occurred began to flee in all directions. Officer Van Dyke sent out a flash message and at the same time, an unidentified male/Arabic came out of the store. The unidentified male/Arabic started pointing north to indicate the direction in which one of the occupants of the vehicle had fled. Officer Merkel gave chase while Officer Van Dyke remained in the squad car. Once Officer Van Dyke left the scene via the police vehicle, he subsequently left followed Officer Merkel into the alley behind the store.

When Officer Van Dyke entered the alley, he observed [REDACTED] about 25 feet in front of him. He exited the vehicle and heard Officer Merkel giving verbal directions to [REDACTED] who was stationary but had his hand in the front of his waist band. [REDACTED] however, refused to comply with Officer Merkel's verbal commands to show his hands; Officer Merkel subsequently tackled [REDACTED] from behind and both individuals fell to their knees. He, Officer Merkel, then gave [REDACTED] a pushed on the back to get him to fall to the ground. Once [REDACTED] was lying face down on the ground, Officer Van Dyke approached the scene to handcuff him. Upon inquiry, Officer Van Dyke did not know if he had his weapon out of its holster at that time. He added that he did not recall if Officer Merkel had his weapon out at that time.

Once [REDACTED] landed on the ground, Officer Merkel was having difficulty handcuffing him. Officer Van Dyke then assisted Officer Merkel in his attempt to gain control over [REDACTED] by attempting to pull his right arm behind his back. Once Officer Merkel gained control over [REDACTED] left arm, Officer Van Dyke gained control over his right arm; Officer Merkel was then able to handcuff him. [REDACTED] was then brought to his feet and during a protective pat-down preformed by Officer Merkel, a large bag containing several small bags of

Marijuana was recovered. He was subsequently transported to the 007th District Station for processing and then on to Holy Cross Hospital.

Officer Van Dyke stated that [REDACTED] sustained swelling near one of his eyes but did not recall how it was sustained, nor did he recall any bleeding and/or bruising from the affected area. He and Officer Merkel were at Holy Cross Hospital for approximately two before [REDACTED] was released on an I-Bond. Officer Van Dyke added that he and his partner had left the hospital prior to [REDACTED] receiving any treatment beyond that of a triage nurse. When shown the evidence technician photographs of [REDACTED] Officer Van Dyke indicated that he did not know how the injury to his left eye was sustained. Officer Van Dyke denied the allegations against him (Att #32).

In his statement, the accused, **Officer Joseph Merkel**, provided essentially the same account of the incident as Officer Van Dyke. He indicated that he struck [REDACTED] one time on the back, as they were kneeling on the ground in order to get [REDACTED] to show his hands. Officer Merkel added that [REDACTED] did not lose consciousness at any time during the course of his arrest. He stated that he pointed his gun at [REDACTED] as he, Officer Merkel feared for his life. He clarified that he believed [REDACTED] may have been armed because he would not show his hands. Officer Merkel indicated that he placed his gun back in its holster prior to tackling [REDACTED]. He tackled [REDACTED] even though he believed that he was armed, figuring that he could tackle him to the ground and gain assistance from his partner who was behind him. Officer Merkel denied that he kicked or maltreated [REDACTED] and stated that [REDACTED] sustained his injury when they fell to the ground. He indicated that when he fell on top [REDACTED] struck his head on the ground (Att #33).

CONCLUSION:

The R/I recommends a finding of **NOT SUSTAINED** for the allegations made against the accused officers. This investigation revealed insufficient evidence to either support or refute the allegations. There is no contention that [REDACTED] sustained an injury to his left eye. The Central Book and Evidence Technician photographs clearly display such and his injury is documented in the medical records; all of the witnesses stated that they observed swelling to [REDACTED] eye on day after this incident.

What can not conclusively be determined is how the injury was sustained. [REDACTED] stated that he was twice kicked by Officer Merkel; this is noted in the medical records which reflect that he stated that he was kicked in the eye. Additionally, those individuals who were interviewed and indicated they were with [REDACTED] just prior to his arrest stated that he told them, on the following day, that he had been kicked in the eye. Officer Merkel, however, stated that [REDACTED] sustained the injury when he fell to the ground, landing face first. He stated, as indicated in his Tactical Response Report, that he struck [REDACTED] on the back to get him to fall to the ground but denied that he kicked him.

None of the witnesses, however, stated that they witnessed exactly how [REDACTED] sustained his injury. They indicated that [REDACTED] told them, on the following morning, that he was kick the face but no one actually witnessed this. The treating physician, Dr. [REDACTED] indicated that [REDACTED] injury was consistent with blunt trauma but did not make specific comment regarding how it was sustained. Additionally, Officer Van Dyke could not account for [REDACTED] injuries. Given the lack of any witnesses, it can not be determined how [REDACTED] sustained the injury to his left eye.

[REDACTED] also alleged that Officer Van Dyke pointed a gun at him. As with the previous allegation, there is insufficient evidence to either support or refute the allegation. [REDACTED] identified Officer Van Dyke as the officer who pointed a gun at him but Officer Van Dyke could not recall if he had his gun out of its holster. Additionally, Officer Merkel indicated that he was the officer pointed his weapon at [REDACTED]. He stated that he did so because [REDACTED] refused to show him his hands and thus he, Officer Merkel, believed [REDACTED] was armed. [REDACTED] however, stated that he was not armed and was only bending over to retrieve his cellular telephone. Given these discrepancies and the lack of any witnesses, it can not be determine who pointed a gun [REDACTED] and why it was done.